

# **EXHIBIT 2**

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1)	TERRY L. DENTON,	)	
2)	CYNTHIA R. DENTON,	)	
		)	
	Plaintiffs,	)	
		)	
v.		)	CASE NO.
		)	
1)	NATIONSTAR MORTGAGE LLC	)	4:18-cv-00241-GKF-JFJ
	d/b/a MR. COOPER AS	)	
	SUCCESSOR TO SETERUS, INC.,	)	
2)	FEDERAL NATIONAL MORTGAGE	)	
	ASSOCIATION,	)	
		)	
	Defendants.	)	

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ORAL DEPOSITION OF  
FEDERAL NATIONAL MORTGAGE ASSOCIATION  
BY AND THROUGH ITS DESIGNATED REPRESENTATIVE  
ERICH LUDWIG  
OCTOBER 29, 2019  
VOLUME 1 OF 1

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1                   ORAL DEPOSITION OF ERICH LUDWIG, designated  
2   representative of Federal National Mortgage Association,  
3   produced as a witness duly sworn by me at the instance  
4   of the Plaintiffs, was taken in the above-styled and  
5   numbered cause on OCTOBER 29, 2019, from 9:07 AM to 2:39  
6   PM, before Beth Howard, CSR in and for the State of  
7   Texas, reported by Machine Shorthand, at David Glenn  
8   Law, located at 1017 William D. Tate Avenue, Grapevine,  
9   Texas, pursuant to the Federal Rules of Civil Procedure,  
10   Notice of Deposition, and the provisions stated on the  
11   record or attached hereto.

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1 A P P E A R A N C E S

2 FOR THE PLAINTIFFS:

3 LUKE WALLACE, ESQ.  
DAVID HUMPHREYS, ESQ.  
4 Humphreys Wallace Humphreys, P.C.  
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8 FOR THE DEFENDANT FEDERAL NATIONAL MORTGAGE ASSOCIATION:

9 ERNEST P. WAGNER, ESQ.  
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15  
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18  
19  
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21  
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23  
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25

1 THE REPORTER: Do counsel agree to waive  
2 the reading of the 30(b)(5) requirements into the  
3 record?

4 MR. WALLACE: Yes.

5 MR. WAGNER: Yes.

6 THE REPORTER: Are there any other  
7 agreements or stipulations before we begin?

8 MR. WALLACE: Just taken pursuant to  
9 Federal Rules.

10 (OATH ADMINISTERED BY THE REPORTER.)

11 ERICH LUDWIG,

12 having been first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. WALLACE:

15 Q. Good morning.

16 A. Morning.

17 Q. Would you please tell us your name.

18 A. Erich Ludwig.

19 Q. Mr. Ludwig, my name is Luke Wallace. I  
20 represent Cynthia and Terry Denton --

21 A. Um-hmm.

22 Q. -- who have filed a lawsuit against Setarus --  
23 now NationStar -- and Fannie Mae.

24 I understand that you are here on behalf of  
25 Fannie Mae. Is that correct?

1 A. Yes.

2 Q. How long have you been -- I'm assuming you're  
3 employed by Fannie Mae.

4 A. Yes.

5 Q. How long have you been employed by Fannie Mae?

6 A. 11 years.

7 Q. And what do you do for Fannie Mae?

8 A. I'm currently a manager of the Servicer Support  
9 Center.

10 Q. What is a Servicer Support Center?

11 A. The Servicer Support Center oversees the  
12 handling of any inquiries from any of our 800 to 1,000  
13 servicers that manage Fannie Mae mortgages. Those  
14 inquiries are either emails or calls.

15 Q. 800, roughly, servicers?

16 A. Yeah. 800 to 1,000, yes.

17 Q. What are "servicers" that you're speaking of?  
18 Give us --

19 A. Banks that we've given a responsibility to  
20 manage our mortgages from a -- from a payment and  
21 oversight standpoint.

22 Q. And you said you oversee this group that takes  
23 inbound and --

24 A. And calls, yes.

25 Q. -- phone calls?

1 the note and mortgage, that you're aware of, based on  
2 your training and experience?

3 A. No.

4 Q. So besides the homeowner, is there any other  
5 party that has any responsibilities within the note and  
6 mortgage?

7 A. The servicer has that responsibility.

8 Q. And how did this responsibility arrive at the  
9 servicer's doorstep, if you will?

10 A. They are the ones responsible for collecting  
11 the payment.

12 Q. And is that because Fannie Mae has said or  
13 designated that to occur?

14 A. We don't designate the servicer.

15 Q. Who designates the servicer?

16 A. When the loan is originated, a bank can decide  
17 whether they will service it themselves, or determine  
18 that they will use a servicer to do that for them.

19 Q. Okay. What's your understanding about the  
20 history of this note and mortgage that the Dentons  
21 entered into as far as the bank that originally owned  
22 it?

23 A. Not familiar with the originating bank. We --  
24 we do not originate loans.

25 Q. And is it your understanding that the original

1 Q. And how do you establish intent at Fannie Mae?

2 A. Fannie Mae doesn't establish intent. The  
3 servicer does on our behalf.

4 Q. How does your servicer establish intent for  
5 Fannie Mae?

6 A. The guide is silent on this point. But in --  
7 in general, servicers traditionally get something in  
8 writing from the borrower indicating how they would like  
9 those funds to be applied, whether it be to repairs or  
10 to pay off the loan.

11 Q. Did you see a facsimile from my clients in --  
12 January 11th?

13 A. January. Yes.

14 Q. Did that express intent --

15 A. Yes.

16 Q. -- that they wanted to pay off the loan?

17 A. Yes.

18 Q. All right. And was the loan paid off at that  
19 point?

20 A. When the funds were received, they were not a  
21 full payoff.

22 Q. And why is that?

23 A. Because the funds were received after a late  
24 charge was incurred on the account.

25 Q. Where did Fannie Mae receive this information



1 that you're telling us about that the funds were  
2 received after a late charge was assessed? What's the  
3 basis for you to say that? What are you relying on?

4 A. This is what Setarus relayed to us as a -- from  
5 a timeline perspective.

6 Q. Okay. When did they relay this to you from a  
7 timeline perspective to Fannie Mae?

8 A. The evidence that they provided for this case.

9 Q. So is it a document that you're relying on?

10 A. It's the evidence that we asked for and -- to  
11 review this case: The correspondence, the requests for  
12 payoff, the interactions.

13 Q. Sure. And I'm -- I really want to drill down.  
14 I really want to know what's this document -- the source  
15 document that Fannie Mae is using to say that my  
16 client -- the payoff funds were received after a late  
17 charge was assessed.

18 A. From our understanding, this is what the  
19 servicer communicated to us.

20 Q. What's the document? Is this a phone call  
21 between you and Setarus or -- when I say "you,"  
22 Fannie Mae and Setarus -- or is there a record here that  
23 you're relying on?

24 A. Again, I can't speak to the accuracy.

25 Q. I didn't ask that.

1           A. I can say that in the evidence they provided  
2 this was a document with a timeline that broke that out.

3           Q. When's the last time you saw that timeline?

4           A. Yesterday.

5           Q. Okay. And I take it you have other matters you  
6 deal with at Fannie Mae.

7           A. Yes.

8           Q. The Denton matter, is this one of those matters  
9 that's on the top of your head at all times?

10          A. Well, it's -- right now it is, yes.

11          Q. And when you reviewed this document yesterday,  
12 is it one of those things that helped refresh your  
13 memory of the facts so that you could prepare and give  
14 us the best testimony today?

15          A. Yes.

16                   MR. WAGNER: Counsel, if I may interject.

17                   To the best of my knowledge there is no  
18 Setarus timeline. I made a timeline and that's my work  
19 product. So if this is going where you want to request  
20 my work product, I'll object.

21                   He reviewed that together with all the  
22 original documents. But I'm not aware of another  
23 timeline besides mine that just has dates.

24                   MR. WALLACE: Okay.

25                   MR. WAGNER: Sort of a case chronology, if

1 handled the case would be here, yes.

2 Q. Okay.

3 A. But I can't say in all circumstances.

4 Q. I'm not asking in all circumstances. I'm  
5 speaking in this circumstance today, in this lawsuit.

6 A. Yeah.

7 Q. Is it your understanding that Mr. Wagner  
8 represents --

9 A. Yes, Fannie Mae.

10 Q. And Setarus/NationStar?

11 A. It is my understanding that he worked on behalf  
12 on this case. I don't know --

13 Q. What does that mean, "he worked on behalf"?

14 A. Worked on this -- the firm worked as the  
15 default attorney to handle this case, to handle this  
16 litigated case.

17 Q. And would that be another way of saying that he  
18 represented Setarus/NationStar in this case, too?

19 A. I would say so, yes.

20 Q. So as you sit here today, Fannie Mae's  
21 corporate representative, the reason the loan was not  
22 paid off as requested by the Dentons in January of  
23 2017 --

24 A. Um-hmm.

25 Q. -- is because the payoff funds, when they were

1 received, they were received after a late charge had  
2 been assessed?

3 A. Yes.

4 Q. And that late charge is what prevented this  
5 loan from being paid off in January of 2017?

6 A. Yes.

7 Q. And that's Fannie Mae's position today, October  
8 29th, 2019?

9 A. What position?

10 Q. That the reason the loan was not paid off in  
11 January of 2017, when the payoff funds were received, is  
12 because they were received after a late charge had been  
13 assessed by the servicer.

14 A. That was the servicer's decision, and that's  
15 Fannie Mae's understanding of the servicer's decision.

16 Q. And that's Fannie Mae's position in this case?

17 A. Fannie Mae doesn't necessarily have a position  
18 about -- about that. It just -- that's just what the  
19 servicer decided to do.

20 Q. Let me hand you what has been marked by the  
21 lawyers for Setarus as Setarus/Denton 579 through 581.

22 Do you recognize Setarus/Denton 579 through  
23 581?

24 A. Yes.

25 Q. What is it?

1 A. It's a payoff statement.

2 Q. And it's a payoff statement from Setarus to my  
3 clients, the Dentons; is that correct?

4 A. Yes, that's correct.

5 Q. What's the date of that payoff statement?

6 A. Date of that payoff statement is January 12th,  
7 2017.

8 Q. And is -- as look at it, this is a document  
9 you're familiar with?

10 A. Yes.

11 Q. There's certain conditions to pay off the loan  
12 that Setarus is telling the Dentons about, correct?

13 A. That is correct.

14 Q. And is -- there's an amount that the Dentons  
15 are told will have to be paid by a certain date if they  
16 want to pay off the loan, correct?

17 A. Correct.

18 Q. What is that amount?

19 A. \$41,031.18.

20 Q. And by when must that amount be paid to pay off  
21 this loan at the Dentons'?

22 A. January 20, 2017.

23 Q. So the letter's dated January 12th, and they've  
24 got basically an eight-day window to pay this  
25 \$41,031.18?

1 A. That is correct.

2 Q. And if that amount is received by Setarus on or  
3 before January 20th, 2017, the loan is paid off?

4 A. Subject to the payoff conditions outlined  
5 below.

6 Q. What are the payoff conditions?

7 A. Additional interest is required after that  
8 date, any charges posted to your account after this  
9 date, and a late charge of 19.66, according to the loan  
10 agreement.

11 Q. Okay. Let's break those out.

12 So if the payoff funds are received after  
13 January 20th, 2017, there's additional interest of \$7.17  
14 required each day after that, right?

15 A. That is correct.

16 Q. Okay. So if the funds were received on or  
17 before January 20th, we're not dealing with the \$7.17  
18 interest per day, correct?

19 A. That's correct.

20 Q. If any -- Condition Number 2: If any  
21 additional -- excuse me. Strike that.

22 Condition 2 is, "If any charges, including  
23 escrow disbursements, are posted to your account after  
24 the date of this letter, you also have to pay those  
25 charges," correct?

1     sure --

2             A.    Sure.

3             Q.    This contract is between Fannie Mae and your  
4     servicers, correct?

5             A.    Yes.

6             Q.    Now, in the document, if we'll flip over to  
7     what is Page 196 -- marked by the lawyers, that is, and  
8     it's Page 1 of 22 for the document.

9                     It says at the very beginning, "Mortgage  
10    Selling and Servicing Contract." It says it's between  
11    the mortgage lender and Fannie Mae. Short for Federal  
12    National Mortgage Association, correct?

13            A.    Yes.

14            Q.    But identifies the lender as -- the lender  
15    under this contract is not going to be Fannie Mae; it's  
16    going to be the other party to the contract, right?

17            A.    Yes.

18            Q.    Okay. And in this instance, that's Setarus,  
19    correct?

20            A.    Correct.

21            Q.    And is it your understanding that NationStar  
22    also is subject to this contract?

23            A.    Correct.

24            Q.    And in the -- the contract here, one of the  
25    purposes it identifies is to provide the terms and

1 Are you with me?

2 A. Yes.

3 Q. There's a Paragraph Number 3 here under  
4 Section A, "Servicing duties of the lender."

5 Do you see that?

6 A. Yes.

7 Q. Would you read for us the first language we  
8 have there underneath that "Servicing According to the  
9 Guides"?

10 A. "Any mortgage serviced under this Contract,  
11 which we own or in which we have purchased a  
12 participation interest, must be serviced by the Lender  
13 according to the provisions in our Guides that are in  
14 effect on the date of this Contract or as amended in the  
15 future."

16 Q. Okay. A couple things to unpack there.

17 This is -- The Dentons' loan, which was  
18 being serviced by Setarus, is one of those that  
19 Fannie Mae purchased, correct?

20 A. Yes.

21 Q. And when it tells -- it mentions the lender,  
22 but the lender here, as we mentioned a minute ago,  
23 that's Setarus underneath this contract, right?

24 A. That is correct.

25 Q. And when it says "the provisions in our



1 rebuilt, then the servicer must use the insurance loss  
2 proceeds to reduce the outstanding mortgage loan debt"?  
3 Any discretion there?

4 A. I don't think there's discretion in that  
5 statement, but, again, I'm not -- I'm not an attorney.

6 Q. No, but you are the corporate representative  
7 for Fannie Mae?

8 A. Yes.

9 Q. And Fannie Mae creates these guidelines, right?

10 A. Yes.

11 Q. And the purpose of the guidelines is to provide  
12 instruction and direction to the servicers?

13 A. That is correct.

14 Q. Are the servicers also supposed to understand  
15 and interpret, if you will, the note and mortgage?

16 A. Yes.

17 Q. Does Fannie Mae have an obligation to  
18 understand and interpret the note and mortgage?

19 MR. WAGNER: Objection to form.

20 Q. (BY MR. WALLACE) If you know.

21 A. This is something we ask our servicers to do.

22 Q. Is Fannie Mae a party to the note and mortgage  
23 with the Dentons?

24 A. Yes.

25 Q. But Fannie Mae doesn't have any obligations

1       whatsoever under the note and mortgage?

2                       MR. WAGNER:   Objection to form.

3               Q.   (BY MR. WALLACE) Let me ask you:   Does  
4   Fannie Mae have any obligations or responsibilities  
5   under the note and mortgage?

6               A.   We outline the servicer's responsibilities in  
7   the Servicing Guide, what they should do.

8               Q.   Does Fannie Mae have any obligations or  
9   responsibilities to the Dentons in the -- as being a  
10   party to the note and mortgage?

11              A.   We -- we transfer the responsibility -- the  
12   responsibility is given to the servicer to -- to govern  
13   how that loan should be serviced.   We don't have a  
14   relationship with the Dentons.

15              Q.   Let me have you go back to what was produced  
16   and marked by Fannie Mae as Fannie Mae/Denton 156  
17   through 166.

18                       What is that?   It's a couple of emails, it  
19   appears?

20              A.   Email correspondence.

21              Q.   And it looks like it's also an inquiry -- a  
22   complaint from my clients to Fannie Mae?

23              A.   I wouldn't necessarily -- "complaint."

24              Q.   How would you describe the July 28th -- is it  
25   an inquiry?

1     there like a summary somewhere that tells you when  
2     particular sections were updated throughout the years?

3             A.   Within -- within FannieMae.com there's a link  
4     of all servicing announcements. So you can look at  
5     historically when changes and updates happen, and that  
6     is also available on FannieMae.com. You can find that  
7     where you find the Servicing Guide.

8             Q.   Okay. Thank you.

9                     Did Setarus ever make a determination or a  
10    finding of whether or not it was economically feasible  
11    to repair this property?

12            A.   I do not know that.

13            Q.   I'll hand you what's been marked by lawyers for  
14    Setarus as Setarus/Denton 134 and 866.

15                     Tell me when you're ready to discuss that.

16            A.   I'm ready.

17            Q.   First, this is a fax from my client to Setarus,  
18    dated January 11th, 2017?

19            A.   Yes.

20            Q.   And would you agree that it expresses the  
21    intent of the borrowers to use the insurance proceeds  
22    from Allstate to pay off the mortgage?

23            A.   It does.

24            Q.   Thank you.

25                     MR. WALLACE: Let's go off the record for a

1 Q. So was it done at Fannie Mae's direction, then,  
2 to release the lien?

3 A. At Fannie Mae's direction.

4 Q. And it was based on the totality of the  
5 circumstances?

6 A. That is correct.

7 Q. And I've also received notice that just --  
8 we're October 2019 -- last month, in September, that the  
9 mortgage loan balance, the money that -- we received  
10 notice that who's servicing it now, NationStar, has  
11 applied the funds to the Denton account now which were  
12 received back in January of 2017.

13 Are you aware of that?

14 A. Yes.

15 Q. And was that at the direction of Fannie Mae,  
16 too, to apply those funds to pay off the loan?

17 A. That is correct.

18 Q. And can you help us understand why that did not  
19 occur until September of 2019, when the funds were  
20 received in January of 2017?

21 MR. WAGNER: Object to form.

22 A. We received notice in June of 2019 of this  
23 lawsuit.

24 At that point, we reviewed all the case  
25 details and made the decision, based on circumstances --

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1) TERRY L. DENTON, )  
2) CYNTHIA R. DENTON, )  
Plaintiffs, )  
v. ) CASE NO.  
1) NATIONSTAR MORTGAGE LLC ) 4:18-cv-00241-GKF-JFJ  
d/b/a MR. COOPER AS )  
SUCCESSOR TO SETERUS, INC., )  
2) FEDERAL NATIONAL MORTGAGE )  
ASSOCIATION, )  
Defendants. )

REPORTER'S CERTIFICATION OF ORAL DEPOSITION OF  
FEDERAL NATIONAL MORTGAGE ASSOCIATION  
BY AND THROUGH ITS DESIGNATED REPRESENTATIVE  
ERICH LUDWIG  
OCTOBER 29, 2019

I, BETH HOWARD, a Certified Shorthand Reporter  
in and for the State of Texas, hereby certify to the  
following:

That the witness, ERICH LUDWIG, was duly sworn and  
that the transcript of the oral deposition is a true  
record of the testimony given by the witness;

That the deposition transcript was duly submitted on  
\_\_\_\_\_ to ERNEST P. WAGNER, ESQ., Maurice Wutscher  
LLP, 105 W. Madison Street, 18th Floor, Chicago,  
Illinois 60602, for examination, signature and return to  
Bradford Court Reporting, LLC by \_\_\_\_\_;

That pursuant to information given to the deposition

1 officer at the time said testimony was taken, the  
2 following includes all parties of record and the amount  
3 of time used by each party at the time of the  
4 deposition:

5 LUKE WALLACE, ESQ. (04 hours, 11 minutes)  
Attorney for Plaintiffs  
6 ERNEST P. WAGNER, ESQ. (00 hours, 02 minutes)  
Attorney for Defendants  
7

8 I further certify that I am neither counsel for,  
9 related to, nor employed by any of the parties or  
10 attorneys in the action in which this proceeding was  
11 taken, and further that I am not financially or  
12 otherwise interested in the outcome of the action.

13 Certified to by me on this 12th day of November,  
14 2019 day of May, 2012.  
15  
16  
17

18 BETH HOWARD, TEXAS CSR 529  
EXPIRATION DATE: 04/30/2021  
19 Bradford Court Reporting, L.L.C.  
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